

1999

State of Utah v. John K. Montoya : Brief of Appellant

Utah Court of Appeals

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Jan Graham; attorney general; attorney for appellee.

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

STATE OF UTAH	/	
Plaintiff/Respondent	/	
vs.	/	Case No 990983-CA
JOHN K. MONTOYA	/	
Defendant/Appellant	/	Priority # 2

BRIEF OF APPELLANT

This appeal is from the Court sentencing the Defendant to a term of Five (5) years to Life to be served at the Utah State Prison, after a plea of guilty to one count of operations of a clandestine laboratory, a First Degree Felony.

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FILED
Utah Court of Appeals

FEB - 7 2000

Julia D'Alesandro
Clerk of the Court

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

STATE OF UTAH,	/	
Plaintiff/Respondent	/	
vs	/	Case No 990983-CA
JOHN K. MONTROYA	/	Judge_____
Defendant/Appellant	/	Priority No 2

BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

This appeal is from an order of Judge Michael Lyon sentencing the Defendant to serve a term of five (5) years to life at the Utah State Prison on the Defendant's plea of guilty to one count of operation of a clandestine laboratory, a First Degree Felony, The Defendant was sentenced on the 21st day of October, 1999.

The notice of appeal was filed with the Court on the 17th Day of November,

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1999. The Jurisdiction of this Court is conferred pursuant to U.S.A. Sec 78-2-2(3)(I).

STATEMENT OF THE ISSUES AND STANDARD OF REVIEW

Did the Trial Court commit reversible error when it sentenced the Defendant to serve a term of Five (5) years to life at the Utah State Prison, after a plea of guilty to operation of a clandestine laboratory, a First Degree Felony in violation of U.C.A. 58-37-4(e), as amended, where the plea was induced by representations of the Defendant's attorney that both the prosecutor and the Attorney believed the Appellant would receive a sentence of probation?

STANDARD OF REVIEW

The Appellate Court reviews the sentencing decisions of a trial court for abuse of discretion State v. Houk 906 P. 2nd 907, 909 (Utah App 1995). The Appellate Court reviews whether the Defendant's plea was entered into voluntarily as a legal question, which is reviewed for correctness, giving no deference to the ruling of the Trial Court. State v. Pena 869 P 2d 932 (Utah 1994)

STATEMENT OF THE CASE

On June 1, 1999 the Defendant was charged by information with one count of violation of the Clandestine Drug Lab Act in violation of Section 58-37d-(4) U.C. A., a first degree felony and one count of Possession of a controlled

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substance in violation of Section 58-37-8(2) U. C. A., a Third Degree Felony. As a part of negotiating a resolution of this case, the Defendant's attorney was informed by the prosecutor that it was her feeling that the Defendant would not go to prison, but rather would receive probation at sentencing. This information was passed on to the Defendant and was the inducement for the Defendant to enter a plea of guilty on September 19, 1999. The report prepared by Adult Probation recommended 30 days in the County jail. However, the Trial Judge did not accept the recommendation and partially at the urging of the prosecutor sentenced the Defendant to serve a term of not less than five years and may be for life at the Utah State prison.

STATEMENT OF FACTS

By information on the 1st day of June, 1999 the Defendant was charged with one count of violation of Clandestine Drug Lab Act in violation of Section 58-37d-4, as Amended and one count of possession of a controlled substance, to wit Methamphetamine, Schedule II in violation of Section 58-37-8(2) U. C. A., as amended. The Weber County Public Defenders Association was appointed to defend the Defendant and Michael D. Bouwhuis of the Weber County Public Defenders Association was assigned to the case.. Mr. Bouwhuis entered into

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negotiations with the prosecuting attorney to agree on a settlement of the charges. (Affidavit Michael D. Bouwhuis) In the course of negotiating a settlement with the prosecuting attorney of the counts against the Defendant, the prosecuting attorney, Camille Neider, stated to Mr. Bouwhuis that it was her feeling that the Defendant would not go to prison, but rather would receive probation at sentencing. (Affidavit Michael D. Bouwhuis) Mr. Bouwhuis passed this information on to the Defendant according to Mr. Bouwhuis, which provided a significant inducement for the Defendant to enter a plea of guilty. (Affidavit. Michael D. Bouwhuis)

On September 19, 1999 t he Defendant entered into a plea of guilty to one count of violation of Clandestine Drug Lab Act, a first degree felony. (Plea Hearing p 9) The plea was made after the State dismissed the third degree felony, possession of a controlled substance and amended the information to eliminate the enhancement language that the lab was for the production of methamphetamine. (T Plea Hearing, p. 1)

The Court then questioned the Defendant as to whether he understood the agreement. The Court then asked the Defendant if there was anything else that he was relying on in exchange for his plea of guilty that had not been stated on the record. The Defendant answered "I don't think so" (T Plea Hearing p. 2) The Trial

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Court then questioned the Defendant extensively to determine the voluntariness of the plea (T Plea Hearing, pg's 3-9) As part of the questioning, the Trial Judge informed the Defendant that the Judge is not bound by any discussion that might have occurred between the Defendant and his attorney. (T. Plea Hearing p. 7) The Trial Judge ordered the Defendant to go to the Probation Department for the preparation of a presentence report (T. Plea Hearing p. 9) However, at no time did the Trial Judge inform the Defendant that he was not bound by any recommendation that was to be provided by Adult Probation.

The presentence report provided by Adult Probation Department recommended that the Defendant be sentenced to serve a term of five years to life at the Utah State Prison, to be suspended conditioned on the Defendant serving 30 days in the Weber County jail, pay a fine of \$555.00, pay \$500.00 in public defender fees and pay restitution in the amount of \$2,164.25 (Presentence Report)

At the sentencing hearing, the Judge first informed Mr. Gravis, who was representing the Defendant at sentencing, that he thought the recommendation made by the probation department, or at least by Gary Thompson, a contract investigator, was a ludicrous recommendation. (T Sentencing Hearing p 3) Mr Gravis argued that the recommendation was staffed by the probation department

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just the same as any other sentencing would be. However, the Judge stated that he was not sure that it was. (T Sentencing Hearing p 3)

The Judge questioned the prosecutor as to what evidence there was that the Defendant benefitted from the lab. The prosecutor replied that the Officer O'Malley questioned the Defendant and the Defendant told him that he had not sold any for about a month. The prosecutor then argued that she believed that the Defendant was selling methamphetamine.(T. Sentencing Hearing pg's 4-6)

The Court then asked the Prosecutor if she had a recommendation. In response thereto, the Prosecutor stated that it's an appropriate recommendation for prison, the serious nature of it and the fact that the Defendant had one previous charge. (T Sentencing Hearing p 7)

The Trial Judge sentenced the Defendant to serve a term of not less than five years and may be for life at the Utah State Prison (T. Sentencing Hearing p.8)

SUMMARY OF ARGUMENT

The Defendant was initially charged with one count of operation of a clandestine drug laboratory and one count of possession of a controlled substance. The Defendant was assigned an attorney from the Weber County Public Defenders Association. In the course of negotiating a settlement with the prosecuting attorney,

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the Defendant's attorney was informed by the prosecutor that her feeling was that the Defendant would not go to prison, but rather would receive probation at sentencing. This information was made known to the Defendant, and was the inducement for his plea of guilty to one count of operation of a clandestine drug laboratory, a first degree felony. Since, the Defendant made the plea based on inaccurate information he should be permitted to withdraw his plea and either enter into new negotiations with the State or have a trial before a judge or jury on the information.

ARGUMENT

THE DEFENDANT'S PLEA OF GUILTY TO ONE
COUNT OF OPERATION OF A CLANDESTINE DRUG
LABORATORY WAS BASED UPON INACCURATE
INFORMATION AS TO WHAT THE SENTENCE
WOULD BE AND THEREFORE THE DEFENDANT
SHOULD BE PERMITTED TO WITHDRAW HIS PLEA.

The Defendant was initially charged with two felonies, the first was operation of a clandestine laboratory, a first degree felony, and the second was possession of a controlled substance, a second degree felony. The District Court appointed the Weber County Public Defenders Association to represent the Defendant. Mr. Michael D. Bouwhuis was assigned to represent the Defendant.

Mr. Bouwhuis contacted Camille Neider of the Weber County Attorney's

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office to attempt a negotiation of a plea bargain in behalf of the Defendant (Affidavit. Michael Bouwhuis.) In the course of negotiating the plea bargain, Ms. Neider stated to Mr. Bouwhuis that it was her feeling that the Defendant would not go to prison, but rather would receive probation at sentencing. (Affidavit. Michael Bouwhuis) This information was passed on to the Defendant by Mr. Bouwhuis, and provided a significant inducement to the Defendant to enter a plea of guilty to one count of operation of a clandestine drug laboratory (Affidavit. Michael Bouwhuis.)

On the 19th of September, 1999 the Court conducted a plea hearing with Mr. Bouwhuis representing the Defendant. (T. Plea Hearing p 1) The State dismissed the third degree felony, possession of a controlled substance, and dropped one of the two enhancements on the first degree felony.(T. Plea Hearing p 1)

The Court asked the Defendant if there was anything else that the Defendant was relying on in exchange for his plea of guilty, to which the Defendant replied, "I don't think so".(T Plea Hearing P. 4). The Court then informed the Defendant that it was not bound by any discussions they may have occurred between the Defendant and his lawyer prior to sentencing. (T. Plea Hearing p. 7) The Court then further informed the Defendant that he has the rights to withdraw the plea if it's made within thirty days from the date of the plea hearing and supported with good cause.

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(T. Plea hearing p. 9) The Court then scheduled sentencing of the Defendant for the 21st of October, 1999, which was more than thirty days from the date of the plea hearing (T. Plea Hearing p. 9)

On the 21st of October, 1999 the Defendant appeared before the Trial Judge for sentencing. The Trial Judge informed counsel for the Defendant that in the Judge's opinion the recommendation by the Probation Department was a ludicrous recommendation (T Sentencing Hearing p 1) Counsel for the State argued that the Defendant should be sent to prison. (T. Sentencing Hearing P 7) The Court sentenced the Defendant to serve a term of not less than five years and may be for life at the Utah State Prison.(T. Sentencing Hearing p 8).

Rule 11(e)(2) of the Utah Rules of Criminal Procedure requires that the Court may refuse to accept a plea of guilty until the Court has found that the plea is voluntarily made. Subparagraph 6 of Rule 11 provides that the Court may refuse to accept a plea unless the Defendant informs the Court that the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached.

It is undisputed that the motivation for the Defendant pleading guilty to the one count of operation of a clandestine drug lab within 500 feet of a residence was

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the representation of the prosecutor that it was her feeling that the Defendant would not go to prison, but rather would receive probation at sentencing. Further, because this feeling of the Prosecutor was related to the Defendant by his attorney the Defendant had a mistaken belief as to what he would be sentenced. While this was not a formal agreement between the Prosecutor and Counsel for the Defendant, it certainly questions the voluntariness of the plea.

As quoted by this Court in the recent case of State v Arviso Ut App 2000, 385 Adv Rpt 3, at P 4

Even so, this case involves a plea bargain. Where the defendant has entered a guilty pleas pursuant to a plea bargain contemplating a particular sentence, the general rule is that the defendant is entitled to withdraw the plea if it is subsequently determined that the sentence is illegal or unauthorized. The withdrawal of a guilty plea returns the parties to their initial positions, and the original charges under the indictment or information may be reinstated.

Since the Defendant contemplated a particular sentence, which sentence did not come to pass, the basic fact that the sentence imposed by the Judge negated the voluntariness of the pleas, and therefore, the Defendant should be permitted to withdraw his plea and either negotiate a new plea or be tried before a judge or jury on the charge contained in the information. Further, because the sitting trial judge has been prejudiced by this case, the Defendant's case should be assigned to a

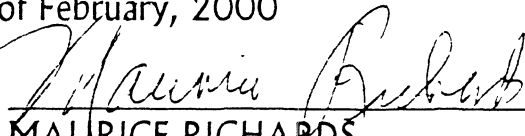
STATE OF UTAH V MONTROYA
Case Number 990983-CA

different trial judge for disposition

CONCLUSION

This Court should remand this case to the Trial Court to permit the Defendant to withdraw his plea of guilty, where the Defendant was relying on the suggestions of the Prosecutor as to what the sentence would be, where the sentence was actually much harsher than contemplated.

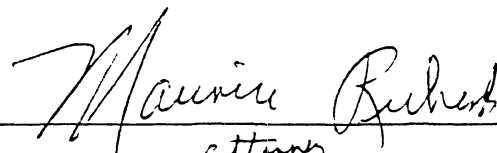
DATED this 9th of February, 2000


MAURICE RICHARDS
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing Brief of Appellant was posted in the United States mail, postage prepaid, on this ____ day of February, 2000 and addressed to:

Jan Graham
Attorney General
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160 East 300 South, 6th Floor
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attorney

MICHAEL D BOUWHUIS - 6498
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2568 Washington Blvd., Suite 102
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IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY, STATE OF UTAH

STATE OF UTAH,	:	AFFIDAVIT
Plaintiff,	:	
vs	:	
JOHN MONTOYA,	:	
Defendant	:	Case No

STATE OF UTAH)
 : SS
COUNTY OF WEBER)

Michael D Bouwhuis, being first duly sworn upon his oath, deposes and says

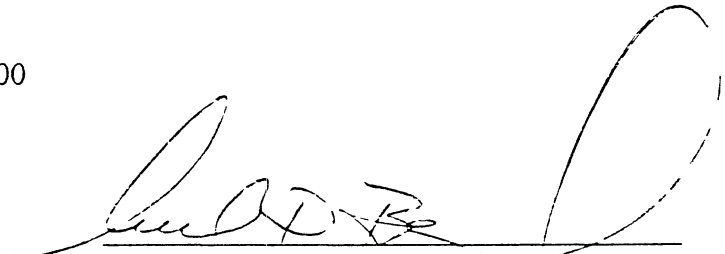
- 1 That I am an attorney, licensed to practice law in the State of Utah
2. That, as a member of the Public Defenders Association of Weber County, I represented the defendant, John Montoya
3. That in the course of negotiating a settlement with the prosecuting attorney of the charges against the defendant, the prosecuting attorney, Camille Neider, stated to me that it was her feeling that the defendant would not go to prison, but rather would receive probation at sentencing

4 That this information was passed on to the defendant in my discussions with him, and that it provided a significant inducement to the defendant to enter a plea of guilty

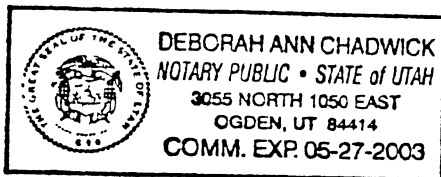
5 That if I had known the prosecuting attorney was going to argue for prison, against a recommendation by the Adult Probation and Parole department of probation, I would have advised the defendant to not enter a plea of guilty

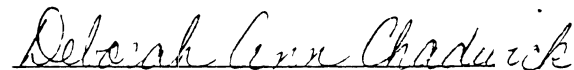
FURTHER your Affiant saith not

DATED this 4 day of January 2000


MICHAEL D BOUWHUIS
Affiant

Subscribed and sworn to before me on this 4 day of January 2000




NOTARY PUBLIC

October 21, 1999

3:00 p.m.

P R O C E E D I N G S

THE COURT: State of Utah versus John Montoya. Mr. Gravis, I don't want you to be blindsided, I think the recommendation that has been made by the probation department or at least by Gary Thompson who is the contract investigator is a ludicrous recommendation, so that you know kind of where the Court is coming from before we proceed forward.

MR. GRAVIS: Well, your Honor, I think that they took into consideration, number one, though Mr. Thompson's was the investigator, it was staffed by the probation department just the same as any other sentencing would be.

THE COURT: I'm not sure that it was.

MR. GRAVIS: Then I'm not sure when it comes to -- he has no prior record. He has -- let's see, he is 39 years old, no priors, he was very cooperative with the police all through this. It is a lenient recommendation on the jail time. His father recently died, he's taking care of his mother. I'm not sure where the Court is going on the recommendation and I don't know what the Court intends to do.

1 **THE COURT:** Well, I have some questions for
2 the State before I firm up my decision. Maybe what
3 we ought to do is defer this -- there was some
4 evidence in the report that he may have had this,
5 this lab for his primary use. What evidence does the
6 State have that other people benefited from the use
7 of this lab?

8 **MS. NEIDER:** Judge, detective -- or Officer
9 O'Malley who is with the Strike Force who responded
10 to the scene and Mirandized and spoke with the
11 defendant asked him if he had ever sold
12 methamphetamine. He said that he had sold
13 methamphetamine but it had been about a month since
14 he had last sold it, and he also asked him if the
15 methamphetamine that he had in his possession at that
16 time was methamphetamine that came from the lab and
17 he indicated that it was. So the evidence of --
18 there were no charges based on the selling, but he
19 was using and selling, the State believes, in order
20 to be able to buy other ingredients so that he could
21 make as he went on.

22 And although, Judge, I don't know that you
23 would necessarily call it a sophisticated system, he
24 definitely had all of the chemicals, he had
25 everything that he needed, it was out there in the

1 garage. And I think that this is one of those exact
2 situations that whether he's making for his personal
3 use or whether he's making it and selling it and
4 reaping the profit from it or just trying to buy
5 ingredients later on, that the impact to society and
6 the impact to that neighborhood, the impact to the
7 people that live nearby is the same. He's putting
8 them in danger, he's putting himself in danger.
9 Anyone who is nearby, the chemicals, the fact that
10 they may explode, any of those things, that's the
11 very reason that the methamphetamine lab statute has
12 been made so serious and is so heavy-handed so that
13 we can get these out of the neighborhoods, get them
14 out of the garages and get them out of the homes in
15 which they are in.

16 Judge, the -- he also indicates that he
17 wasn't selling except for maybe sharing somewhat, but
18 he hasn't had a job for 13 years and hasn't done
19 anything, short of a job that he had back in the
20 '80s. And he indicates that he was mildly depressed
21 or -- and that his addiction made him unable to work,
22 and if that's the case, Judge, I don't see that
23 there's -- that that's a good excuse for it. I mean,
24 the fact of the matter is is he is highly dependent
25 on it and he's risking other people's lives in order

1 to facilitate his own habits, even if that is all
2 he's doing but the State does believe that he was
3 selling.

4 **THE COURT:** Okay. Thank you.

5 **MR. GRAVIS:** Since this time his father has
6 died. As I said, this was a -- just basically, the
7 police walked up, did a knock-n-talk, they had no
8 reason to believe there was a lab. He told them --
9 they asked if they could look in the garage, he told
10 them, yeah. He -- in the police report they asked
11 him why he let the police look in there, he said
12 because they asked.

13 Mr. Montoya may have been making some
14 methamphetamine, it's clear that he was, but he -- I
15 think this case is marked by his cooperation with the
16 police. He was very cooperative, told them
17 everything about it. And it's not, like I say, he
18 was just -- they asked if they could look in the
19 garage and he said sure, and they -- just because the
20 police asked, he figured he would let them do it
21 because they were nice and he was cooperative, so
22 that's I think -- his age, his lack of prior record,
23 and the fact he was so cooperative with the police
24 all work in his favor.

25 **THE COURT:** Thank you. Do you wish --

1 **MS. NEIDER:** Just one clarification the
2 State would like to make and that is that he does
3 have a prior conviction for possession of marijuana.
4 The summary in the very back and the Matrix was
5 incorrect. It indicates there was a conviction and I
6 doubled checked on that. And, frankly, that
7 cooperation and everything was taken into
8 consideration and that's why it wasn't a mandatory
9 commitment on Count I and the State was willing to
10 offer him the agreement that we did. I don't think
11 that that makes a difference -- that's been taken
12 into consideration by the State already and
13 (unintelligible).

14 **MR. GRAVIS:** There was a possession of
15 marijuana six years ago.

16 **THE COURT:** What is the State's
17 recommendation?

18 **MS. NEIDER:** Judge, I think it's an
19 appropriate recommendation for prison, the serious
20 nature of it and the fact that he has had one
21 previous charge and the danger that he put everyone
22 in.

23 **THE COURT:** Thank you. Mr. Montoya, do you
24 wish to say anything?

25 **MR. GRAVIS:** Your Honor, just so the Court

1 is aware of whether he's had one prior conviction for
2 marijuana or not, he still comes out in the same
3 place on the Matrix which puts him in first degree --
4 is into a probation situation, not a prison
5 recommendation. First degree -- there are not very
6 many first degree felonies that are not personal
7 crimes and but the Matrix clearly suggested that any
8 first degree felony of this nature should be treated
9 as a probation situation, not a prison situation.

10 THE COURT: Thank you. Is there anything
11 else that you would like to say, Mr. Montoya?

12 THE DEFENDANT: No, sir. No, sir.

13 THE COURT: It is the sentence of this
14 Court that you be committed to the Utah State Prison
15 for a period not less than five and may be for life.

16 MR. GRAVIS: Your Honor --

17 THE COURT: And you have 30 days from in
18 which to file an appeal of this sentence.

19 MR. GRAVIS: Would the Court consider a
20 diagnostic evaluation? Based upon this record I
21 think --

22 THE COURT: I think not. Thank you.

23 MR. GRAVIS: Thank you, your Honor.

24 (Whereupon the matter was concluded.)
25

September 15, 1999

10:30 a.m.

P R O C E E D I N G S

MR. BOUWHUIS: We could do number 15, John Montoya. This is Mr. Montoya, your Honor. He is charged with a first degree felony, violation of Clandestine Drug Lab Act and a third degree felony of possession of a controlled substance. The State is willing to dismiss the third degree felony, and frankly, I don't know if you are dropping the enhancement or not filing the enhancement on the first degree.

MS. NEIDER: Judge, the language on the Count I, which is a first degree felony, the last two paragraphs have two enhancements. One is that it took place within 500 feet of a residence and the second one is that the lab was for the production of methamphetamine. The State would be moving to dismiss one of those enhancements which leaves it as a first degree felony but not a --

MR. BOUWHUIS: Minimum/mandatory.

MS. NEIDER: -- minimum/mandatory felony. It would be a first degree felony and I would just strike starting with, "and the intended clandestine lab operation was for the production of methamphetamine."

1 **THE COURT:** So the entire paragraph that is
2 the last paragraph after the word "and" -- the
3 conjunction "and," that whole paragraph is being
4 stricken?

5 **MS. NEIDER:** No, Judge. The first part of
6 that paragraph would stay but the second --

7 **THE COURT:** The 500 feet?

8 **MS. NEIDER:** Correct. "The said laboratory
9 operation took place within 500 feet of a residence,"
10 period. The rest of the paragraph would be stricken.

11 **THE COURT:** Period. All right, got it.

12 Mr. Montoya, is that your understanding of
13 the agreement?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** You need to speak up.

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Okay. Is the agreement
18 complete in your mind?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Is there anything else, in
21 other words, that you are relying on in exchange for
22 your plea of guilty this morning that has not been
23 stated on the record?

24 **THE DEFENDANT:** I don't think so.

25 **THE COURT:** Okay. Do you feel pressured by

1 anyone to enter a plea of guilty?

2 THE DEFENDANT: No.

3 THE COURT: Can you speak up? Step over to
4 the microphone so that we -- we're making a record of
5 this and it's important that your responses be very
6 clear on the record.

7 MR. BOUWHUIS: I think the reporter -- are
8 you getting it?

9 THE REPORTER: Yes.

10 THE COURT: Okay.

11 THE DEFENDANT: No.

12 THE COURT: All right. So you don't feel
13 pressured, right?

14 THE DEFENDANT: No, I don't.

15 THE COURT: Do you appreciate that you are
16 presumed to be innocent until the State proves you
17 guilty beyond a reasonable doubt?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: By pleading guilty this
20 morning, you are giving up your right to a speedy,
21 public jury trial, do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: As part of that waiver, you are
24 giving up your right to have the assistance of a
25 lawyer at trial. You are also giving up your right

1 to make a statement to the jury or your right to
2 remain silent. You are also giving up your right to
3 cross-examine those that accuse you, also your right
4 to have your own witnesses present to assist you with
5 your defense. Do you understand each of these
6 rights?

7 **THE DEFENDANT:** Yes, sir, I believe so.

8 **THE COURT:** Do you have any questions about
9 them?

10 **THE DEFENDANT:** No.

11 **THE COURT:** Do you understand that you are
12 giving all these rights up?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Do you understand that your
15 plea of guilty necessarily limits the scope of any
16 appeal after today, do you understand that?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** This charge that is pending
19 before the Court is a first degree felony, it is
20 punishable by a prison sentence from five years to
21 life and as well as a fine up to \$10,000, do you
22 understand -- actually, it could be up to \$25,000, do
23 you understand that?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Do you understand also that

1 whatever -- discussions may have occurred between you
2 and your lawyer in terms of what might happen to you
3 at the time of sentencing and I'm not bound by
4 anything, do you understand that?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Are you presently on probation?

7 **THE DEFENDANT:** No.

8 **THE COURT:** May I have a factual basis for
9 the plea?

10 **MS. NEIDER:** Judge, on the date of the
11 information, the defendant was -- there was a
12 knock-n-talk done at his residence. After some
13 investigation and consent to search his house, the
14 Strike Force agents discovered glass containers and a
15 lab that was set up for the production of
16 methamphetamine. There was also some methamphetamine
17 that the defendant showed them that had been produced
18 by the lab. There was coffee filters, a coffee
19 filter, mercuric acid, forming fuel, acetone and
20 pseudoephedrine.

21 Judge, this was found in the garage that
22 was attached to his house which would make it within
23 500 feet of a residence and the defendant admitted
24 that it was for the production of methamphetamine and
25 that he had made methamphetamine in that -- with

1 those -- with all of the those elements there in the
2 garage.

3 **THE COURT:** Okay. Thank you. In order to
4 convict of you of this offense the State would need
5 to prove beyond a reasonable doubt that you possessed
6 a controlled substance precursor with the intent to
7 engage in a clandestine laboratory operation, or that
8 you possessed laboratory equipment or supplies with
9 the intent to engage in a clandestine laboratory
10 operation and that this laboratory operation took
11 place within 500 of a feet of a residence. That's
12 what the State must prove, do you understand that?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** And prove it beyond a
15 reasonable doubt, do you understand that?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Do you understand that by
18 pleading guilty this morning you are admitting these
19 elements?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** Before I accept your plea, do
22 you wish to ask Mr. Bouwhuis further questions, any
23 further legal advice that you feel you need to have?

24 **MR. BOUWHUIS:** He has no questions.

25 **THE DEFENDANT:** No questions, sir.

1 **THE COURT:** All right. Are you satisfied
2 with the legal advice that you've received in this
3 case?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Is there any statement in
6 advance of plea?

7 **MR. BOUWHUIS:** There is not.

8 **THE COURT:** Okay. To the charge, then, of
9 violation of the Clandestine Drug Lab Act, a first
10 degree felony, how do you plead?

11 **THE DEFENDANT:** Guilty.

12 **THE COURT:** All right. The Court accepts
13 your plea and finds that it's a knowing and voluntary
14 plea. You do have a right to make a motion to
15 withdraw this plea if it's made in writing within 30
16 days from today and is supported with good cause. Do
17 you have a recommended date for sentencing?

18 **UNIDENTIFIED SPEAKER:** October 21st, your
19 Honor.

20 **THE COURT:** Sentencing is continued to
21 October 21st at 2 p.m, you are ordered to be present.
22 I'm ordering you now to go to the probation
23 department today so that a timely presentence report
24 can be prepared and we'll see you on the 21st. Do
25 you have any questions?